

THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
A Court Publication Supported by the Attorney Admissions Fund
Vol. VI, No. 10, April 20, 2000

Employment

Judge Haggerty denied the defendants' summary judgment motion in a civil rights and wrongful discharge action. The plaintiff complained about the billing practices of Oregon Health Sciences University ("OHSU"), and Dr. Alan Seyfer, his employer and supervisor respectively, and was subsequently fired during his first year of employment. Plaintiff brought claims under 42 U.S.C. § 1983 for violation of his constitutional rights for wrongful discharge.

Plaintiff asserts he was terminated for questioning what he believed to be fraudulent billing practices by Dr. Seyfer in approximately 30 cases. Primarily, plaintiff challenges cases in which he participated, and in which Dr. Seyfer was the "attending physician."

Plaintiff's employment began on July 1, 1996. On January 30, 1997, plaintiff was placed upon academic probation. Plaintiff was placed on administrative leave on March 4, 1997. His notice stated that he would be placed on leave

until June 30, 1997, at which time his employment would be terminated. Following the notice on March 4, 1997, defendants initiated termination proceedings. Pursuant to policy, plaintiff requested a hearing, and a Hearing Committee, comprised of five OHSU members (appointed by OHSU) was formed. As House Officer, plaintiff could appear, present evidence, and testify. Dr. Seyfer appeared at the hearing as a representative for OHSU, and was permitted to attend the entire hearing.

Plaintiff alleges a deprivation of his First Amendment rights to free speech (the right to question the billing practices of defendant Seyfer), and that at all times Dr. Seyfer acted within the course and scope of employment. Defendants do not dispute plaintiff's contentions that his alleged speech regarding billing practices for medical services at a public hospital, which are regulated by the federal government and involve governmental reimbursements, constitutes protected speech.

Judge Haggerty recognized that when the facts presented suggest that both legitimate (such as

employee incompetence) and illegitimate (such as retaliation against the exercise of constitutionally protected rights) motives may have played a part in an adverse employment action, the ultimate inquiry is whether the employer would have taken the same adverse action against the plaintiff's employment even in the absence of the protected conduct.

In cases in which the decision-maker responsible for an adverse action taken against an employee is distinct from the party that allegedly harbors retaliatory motives, the Ninth Circuit has held that employer-defendants could not use the non-discriminatory motive of a superior for taking adverse action as a shield against liability, if the superior never would have acted but for the subordinates' retaliatory conduct. Accordingly, Judge Haggerty concluded that there is a triable question of fact regarding whether, but for Dr. Seyfer "setting into motion" alleged retaliatory conduct against plaintiff in the aftermath of plaintiff's exercise of protected speech, OHSU would have

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terminated plaintiff. The Judge emphasized that the kind of mixed-motive inquiry called for in the case is an intensely factual one, and that summary judgment was inappropriate. (Opinion, April 17, 2000).

Plaintiff's Counsel:

Richard Busse

Defense Counsel: Peter Koehler

Procedure

Judge Ann Aiken granted a plaintiff's motion to transfer venue to a district court in Northern California. The plaintiff claimed prejudice since he had originally named Chief Judge Hogan as a defendant. Judge Aiken noted that the case had been transferred to the Northern California court for motions prior to a Ninth Circuit reversal and thus, the case should return. Cooper v. Ashland, CV 94-452-AA (Order, March, 2000 - 4 pages).

Plaintiff: Pro Se

Defense Counsel: Jim Martin

Consumer Law

Plaintiffs filed an action against a collection agency claiming violations of the federal and state unfair debt collection practices statutes. On cross-motions for partial summary judgment, Judge

Janice Stewart granted in part and denied in part both motions.

Plaintiffs claimed that defendant failed to provide a debt notice because they never received such a notice. Defendant provided a log indicating that such a notice had been sent and that this was part of its ordinary business practice. The court found this evidence sufficient to sustain the defense as a matter of law.

Plaintiffs also claimed that defendant violated the acts by contacting one of the plaintiffs at work, rather than attempting to contact them at their residence. Defendant claimed that he looked up plaintiffs in the phone book, but was unable to determine with certainty if their number was listed. The court noted that the directory had only one listing under the plaintiffs' last name and that the listing indicated that the person lived in Beaverton, where the defendant knew that the plaintiffs resided. The court held that defendant failed to establish that it made a good faith attempt to contact the plaintiffs at home given the circumstances, and thus, summary judgment was entered for plaintiffs on this issue.

Finally, plaintiffs claimed that defendant made numerous misrepresentations in its collection letter and on its website. Defendant offered a bona fide error

defense to several of the charges and the court found several violations. The court held that the defendant could be liable for oral statements to plaintiffs' attorney and misrepresentations on the website, even if the plaintiffs hadn't viewed the website. The fact that the website was mentioned in the defendants' letter was sufficient. The contents of the website were not hearsay but admissible party admissions relevant to plaintiffs' punitive damage claim. An affidavit from another unhappy alleged debtor was also admissible under Fed. R. Evid. 404(b) to show the absence of mistake or accident. Van Westrienen v. Americontinental Collection Corp., CV 99-819-ST (Opinion, April 12, 2000).

Plaintiffs' Counsel:

Damon Petticord

Defense Counsel:

Frank Legesen

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